

**REMARKS**

**Status of Claims**

Claims 1, 6-7, 9-10, 15, 17-18, 23-24, 26-27, 32 and 34 are pending, of which claims 1, 10, 18 and 27 are independent.

Claims 1, 7, 10, 18, 23 and 27 have been amended to correct informalities in the claim language and to more clearly define the claimed subject matter. The amendment is supported by, for example, page 7, line 22 to page 9, line 16, and page 11, lines 11-17 of the specification. Care has been exercised not to introduce new matter.

**Claim Rejection - 35 U.S.C. § 101**

Claims 1, 6-7, 9-10, 15 and 17 were rejected under 35 U.S.C. § 101 because the claims are allegedly directed to non-statutory subject matter.

Applicant respectfully submits that claims 1 and 10 have been amended to expressly recite a particular apparatus limitation, such as an image pick up device or a calculating device. Accordingly, claims 1 and 11 and all claims dependent thereon are directed to statutory subject matter. Thus, Applicant requests that the Examiner withdraw the rejection of claims 1, 6-7, 9-10, 15 and 17 under 35 U.S.C. § 101.

**Claim Rejections - 35 U.S.C. § 103**

Claims 1, 6, 10, 18, 23 and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Keller et al. (USP 4,649,502) in view of Nakamura (USP 5,309,228) and in further view of Takakura (US 6,873,731). Claims 7, 9, 15, 17, 24, 26, 32 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Keller in view of Shimazaki (USP

6,204,873). Applicant respectfully traverses these rejections for at least the following reasons.

Applicant respectfully submits that, at a minimum, none of the cited references discloses or suggests “*a representative color determining step for determining, from image data to be printed, a representative color characterizing the printed image of the print, and positions of the representative color,*” as recited by claim 1, and “*a representative color determining step for determining a representative color characterizing the image of the print, and positions of the representative color, based on one of said platemaking data used at platemaking time and said image data created from the platemaking data,*” as recited by claim 10. Applicant respectfully submits that in the present disclosure, the representative color is determined **based on the image data to be printed, specifically, platemaking data used at platemaking time and the image data created from the platemaking data** (see, page 11, line 18 to page 12, line 1 of the specification). The image data of the present disclosure are the original data which are utilized to print images, and are not the data obtained from the actual printed image (i.e., a reference image).

In contrast, Keller fails to disclose the use of **image data to be printed**. The Examiner asserts that elements 51, 52 of FIG. 1, col. 3, lines 16-21, col. 3 line 67 to col. 4, line 8 and col. 4, lines 38-41 of Keller disclose the claimed representative color determining step. Specifically, the Examiner asserts that in Keller, the prevailing color from CMYK is determined in a print zone. However, the determination or calculation in Keller is performed based on the actually printed image (e.g., OK sheets) measured by image elements (see, for example, col. 3, lines 48-66 of Keller). Keller does not disclose the use of original image data to be printed.

Furthermore, it is clear that Keller fails to disclose the use of platemaking data used at platemaking time and the image data created from the platemaking data as the image data to be

printed, as recite by claim 10. It is clear that the platemaking data or the image data created from the platemaking data are not the data obtained from the actually printed image. In rejecting claim 10, the Examiner fails to provide which portion of the cited references discloses the platemaking data of the present claims and in fact, Keller fails to disclose the use of the platemaking data.

As such, it is clear that, at a minimum, Keller fails to disclose the claimed representative color determining step, as recited by claims 1 and 10. Further, similar to Keller, Nakamura, Takakura and Shimazaki utilize the actual image acquired by an imaging device, and do not disclose the use of original image data to be printed, such as platemaking data used at platemaking time and the image data created from the platemaking data.

Moreover, Applicant respectfully submits that Nakamura fails to disclose “[*creating*] a histogram with the tones of each of the three color components of each pixel in each of the sections, and [*selecting*] the representative color and the position thereof from pixels included in a class interval of maximum frequency in the histogram,” as recited by claims 1 and 11. In Nakamura, a two-dimensional histogram of hue values, which are converted from the three color components R, G, B, is created (see, col. 12, lines 8-50 of Nakamura). However, this histogram is not the claimed histogram with **the tones of each of the three color components** of each pixel in each of the sections. Further, Nakamura utilizes the histogram to extract data of a person’s face (see, col. 12, lines 45-50 of Nakamura), but does not disclose **selecting the representative color and the position** thereof from pixels included in a class interval of maximum frequency in the histogram.

Accordingly, the cited references, taken alone or in any combination thereof, do not render claims 1 and 11 or any claim dependent thereon obvious. Thus, claims 1 and 11 and all claims dependent thereon are patentable over the cited references. Similarly, since claims 18 and

27 recite the apparatus corresponding to method claims 1 and 11, respectively, and recite the substantially similar limitation, claims 18 and 27 are patentable for at least the same reasons as claims 1 and 11. Thus, claims 18 and 27 and all claims dependent thereon are patentable over the cited references.

Further, with respect to claims 7, 9, 15, 17, 24, 26, 32 and 34, Applicant respectfully submits that since claims these claims depend upon either one of claims 1, 10, 18 and 27, the combination of Keller and Shimazaki does not render these claims obvious.

Based on the foregoing, Applicant respectfully requests that the Examiner withdraw the rejections of claims 1, 6-7, 9-10, 15, 17-18, 23-24, 26-27, 32 and 34 under 35 U.S.C. § 103(a).

**Conclusion**

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Takashi Saito  
Limited Recognition L0123

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
Phone: 202.756.8000 TS:llg  
Facsimile: 202.756.8087  
**Date: April 22, 2010**

**Please recognize our Customer No. 20277  
as our correspondence address.**